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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,266	07/19/2001	Gary D. Jerdee	71163-03	1248
<div>7590 06/01/2007</div> <div>Mark L. Davis P.O. Box 9293 Gray, TN 37615-9293</div> <div>EXAMINER JUSKA, CHERYL ANN</div> <div>ART UNIT PAPER NUMBER</div> <div>1771</div> <div>MAIL DATE DELIVERY MODE</div> <div>06/01/2007 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/909,266

Applicant(s)

JERDEE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's Response filed March 1, 2007, has been entered. The pending claims are 1 and 22-26.
2. Said Response (page 2, 3rd paragraph – page 3, 1st paragraph) is sufficient to withdraw the 112, 2nd rejection set forth in sections 4-6 of the last Office Action (12/01/06). Additionally, applicant's arguments (page 3, 2nd and 3rd paragraphs) with respect to the 102 rejection is sufficient to withdraw the rejection set forth in section 8 of the last Office Action.
3. However, applicant's arguments (page 3, 4th paragraph – page 4, 3rd paragraph) regarding the 103 rejection have not been found fully persuasive. As such, the obviousness rejection is maintained below. Specifically, applicant argues that the present claims do not recite a combination of EMAC and an elastomer, while the Peoples reference requires an elastomer in its composition (paragraph spanning pages 3-4). In response, it is noted that applicant's claims do not exclude one of the claimed polymers (e.g., metallocene based polyethylenes) from also being classified as an elastomeric polymer.
4. Regarding applicant's assertion that the Thayer reference cannot be properly combined with the Peoples reference to obtain the invention since LLDPE is itself not an elastomer (page 4, 1st paragraph), applicant is correct in noting that the Thayer reference does not disclose that the metallocene based LLDPE has elastomeric properties. Hence, in the new rejection below, the Thayer reference is only relied upon to verify the date of Dow's ENGAGE olefinic elastomer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,508,771 issued to Peoples, Jr. et al. in view of DOW's *Expanding the Power of Elastomers* and *Metallocene Catalysts Initiate New Era In Polymer Synthesis*, by Chemical & Engineering News (Thayer).

Peoples discloses a thermoplastic carpet backing composition comprising copolymers of ethylene and unsaturated esters of lower carboxylic acids, such as vinyl esters and/or lower alkyl acrylates in admixture with olefinic elastomers and filler (abstract). The preferred elastomers include ethylene propylene copolymers (abstract). The lower alkyl acrylate may be a methyl acrylate (col. 7, lines 4-6). The thermoplastic backing layer may be applied directly to a tufted primary backing or may be applied over a pre-coat layer, which may be a copolymer of ethylene and a vinyl ester of a lower carboxylic acid, such as a EVA (col. 5, lines 12-34 and col. 9, line 67-col. 10, line 1). Additionally, a textile pad, or secondary backing, may be applied to the thermoplastic backing (col. 5, lines 38-43). Furthermore, another thermoplastic coating layer, such as an ethylene copolymer, may be applied between the thermoplastic backing layer and the secondary backing by way of co-extrusion with said thermoplastic backing layer (col. 10, lines 14-22). The carpet may comprise face fibers of nylon, polyester, or polypropylene tufted into a

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primary backing of jute or polypropylene (col. 10, lines 23-33). The thickness of the thermoplastic backing layer may be 0.015-0.125 inches (col. 11, lines 19-29).

Hence, Peoples teaches the presently claimed invention with the exception of another polymer as recited in the claim blended with the EMA. Peoples teaches a polymer, which is blended with EMA, is an olefinic elastomer, preferably an ethylene propylene copolymer. However, many olefinic elastomers are also known to be at least metallocene based polyethylenes. For example, Dow's ENGAGE™ polymers are olefinic elastomers made by metallocene catalysts (i.e., INSITE™ technology). See DOW's *Expanding the Power of Elastomers* filed by applicant on May 22, 2006 and *Metallocene Catalysts Initiate New Era In Polymer Synthesis*, by Chemical & Engineering News, September 11, 1995. The *Metallocene* article establishes the date of said ENGAGE™ polymers, metallocene based ethylene copolymers to being 1993. Said *Metallocene* and DOW articles also establish the many advantages of said polymers. Thus, it would have been readily obvious to one of ordinary skill in the art to substitute one of the well known thermoplastic olefinic elastomers made by metallocene catalysts, such as ENGAGE™ polymers for the olefinic elastomers of the Peoples invention since said metallocene based elastomers are known to have superior properties and are known to be recyclable. Therefore, claims 1 and 22-26 are rejected as being obvious over the cited prior art.

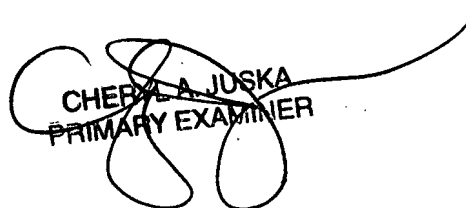
Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
May 22, 2007